FALSE ANSWERS ON APPLICATIONS FOR HEALTH & ACCIDENT INSURANCE

Redden v. Constitution Life Insurance Co.
172 Ohio St. 20, 173 N.E.2d 365 (1961)

Plaintiff instituted action to recover $2,600 from defendant insurance company which he claimed to be due him under a health and accident policy providing for death benefits. The insurance company defended on the ground that plaintiff gave false answers to material questions on the application for insurance which affected the decision to accept the risk. Plaintiff prevailed in the trial court for the full $2,600, but the court of appeals reversed as to $2,000 and granted a new trial for the remaining $600, stating as grounds that there was a failure of proof. The Ohio Supreme Court affirmed, not basing its reasoning on that of the court of appeals, but on the ground that under Ohio law, giving false answers to material questions on an application for health and accident insurance vitiates the insurance contract. Two judges concurred on the basis of failure of proof, but disagreed as to the interpretation of Ohio insurance law. The concurring judges would have applied Ohio Revised Code section 3911.06[1] if there had not been a failure of proof, while the majority held that Ohio Revised Code section 3923.14[2] controlled.

In 1905, the Ohio Supreme Court affirmed a lower court decision in an analogous case, *Standard Life and Accident Ins. Co. v. Sayler*, which had held that health and accident insurance involving *death benefits* was really a type of *life insurance* limited to specific risks, and therefore, the statutory provisions concerning life insurance were applicable rather than those concerning accident insurance.[3] The concurring opinion in *Redden* argued that since *Standard* has never been overruled, Ohio Revised Code section 3911.06[4] dealing with life insurance was applicable to false statements on such health and accident insurance applications and not Ohio Revised Code section 3923.14[5] which applies to accident insurance.

The question as to which section is applicable is particularly signifi-

[1] "No answer to any interrogatory made by an applicant in his application for a policy shall bar the right to recover upon any policy issued thereon, or be used as evidence at any trial to recover upon such policy, unless it is clearly proved that such answer is willfully false, that it was fradulently made, that it is material, and that it induced the company to issue the policy, that but for such answer the policy would not have been issued, and that the agent or company had no knowledge of the falsity or fraud of such answer."

[2] "The falsity of any statement in the application for any policy of sickness and accident insurance shall not bar the right to recovery thereunder, unless such false statement materially affects either the acceptance of the risks or the hazard assumed by the insurer."

[3] 73 Ohio St. 340, 340 N.E. 1137 (1905) *aff'd*, without opinion. The trial court opinion may be read in 15 Ohio Dec. 137.

[4] *Supra* note 1.

[5] *Supra* note 2.

cant as to applications made prior to July 1, 1956,[6] since all an insurance company need prove in order to avoid liability on a policy under the old accident insurance statutes is that there were false answers to material questions on the application which affected the acceptance of the risk or the hazard assumed.[7] On the other hand, under the life insurance section, the company, in order to avoid liability, must prove in addition to the requirements stated above that the false statements induced the insurer to issue the policy and that *but for* such false statements the policy would not have been issued. Furthermore, this section required that the proof be "clear."[8] The insurance company in the instant case based its argument on the accident insurance sections and did not prove the additional elements required under the provisions applicable to life insurance.

The majority in *Redden* took the view that false answers to material questions were enough to vitiate the insurance contract. The majority did not, however, mention *Standard*,[9] and it remained for the concurring opinion to consider it.

Certainly the reasoning of the concurring judges is persuasive. *Standard* involved almost identical facts. Furthermore, the decision has stood for 66 years uncontradicted by a single reported case. In addition to *Standard* the reasoning of the concurring members is supported by the fact that the legislature amended Ohio Revised Code section 3923.14 to read almost exactly the same as Ohio Revised Code section 3911.06.[10] While this amendment became effective after the cause of action in the instant case arose, still, as the concurring judges argue, this is evidence of a legislative intent that the principles announced in *Standard* should be followed by the courts.[11]

From the majority opinion, two items of importance emerge. First, *Standard* seems to have been overruled, at least impliedly, since the facts appear to be identical. Second, and probably more important in terms of current law, the legal position of insurance companies has been strengthened as to false statements in application for this type of health and accident insurance made prior to July 1, 1956. No longer must the insurance company make its proof "clear" or show that *but for* such false statements the insurance policy would not have been issued or that the statements were known to be false, as was required in *Standard*.

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[6] This is that date that the amended version of Ohio Rev. Code § 3923.14 became effective. *Infra*, note 10.

[7] *Supra* note 2.

[8] *Supra* note 1.

[9] Standard Life and Accident Ins. Co. v. Sayler, *supra* note 3.

[10] Ohio Rev. Code § 3923.14 (July 1, 1956), "The falsity of any statement in the application for any policy of sickness and accident insurance shall not bar the right to recovery thereunder, or be used in evidence at any trial to recover upon such policy, unless it is clearly proved that such false statement is willfully false, that it was fradulently made, that it materially affects either the acceptance of the risk, or the hazard assumed by the insurer, that it induced the insurer to issue the policy, and that but for such false statements the policy would not have been issued."

[11] Redden v. Constitution Life Insurance Co., 172 Ohio St. 20, 26, 173 N.E.2d 365, 368 (1961).